

COMMITTEE OF REFERENCE AND COUNSEL OF THE  
FOREIGN MISSIONS CONFERENCE OF NORTH AMERICA

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FEBRUARY 19, 1958.—Committed to the Committee of the Whole House and  
ordered to be printed

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Mr. MONTROYA, from the Committee on the Judiciary, submitted the  
following

REPORT

[To accompany H. R. 2261]

The Committee on the Judiciary, to whom was referred the bill (H. R. 2261) for the relief of the committee of reference and counsel of the Foreign Missions Conference of North America, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to relieve the committee of reference and counsel of the Foreign Missions Conference of North America of all liability to pay the United States any amount over the sum of \$1 million already paid for certain surplus property under a contract numbered W-ANL(PA-I)-3614 dated May 31, 1946, and a supplement thereto dated June 12, 1946.

HISTORY

During the last half of 1945 a number of organizations interested in purchasing surplus war supplies met in order to determine the best way to make those purchases. The Office of the Foreign Liquidation Commissioner in Washington was contacted, and several meetings between representatives of the Commissioner and the organizations were arranged. The Commissioner's representatives recommended that the organizations merge their needs so that a single purchasing agency could make the purchases.

It was decided in April of 1946 that a representative should go to the Pacific area to make whatever purchases were possible in behalf

of the organizations wishing to participate in such a purchasing mission. After many meetings in New York City at which representatives of Protestant and Catholic organizations and some relief agencies were in attendance, 13 Protestant foreign mission organizations decided to send a representative to the Pacific area to negotiate the purchase of war surplus material. As finally constituted, the committee of reference and counsel of the Foreign Missions Conference of North America became the representative of 15 organizations active in the mission field who were interested in purchasing surplus war supplies from the United States Government. The following organizations were so represented:

The Board of Foreign Missions of the Presbyterian Church in the United States of America, 156 Fifth Avenue, New York, N. Y.  
National Council, Protestant Episcopal Church, 281 Fourth Avenue, New York, N. Y.

Board of Missions and Church Extension of the Methodist Church  
Division of Foreign Missions, 150 Fifth Avenue, New York, N. Y.

The General Council of the Assemblies of God (Foreign Missions Department), 336 West Pacific Street, Springfield, Mo.

American Board of Commissioners for Foreign Missions, 14 Beacon Street, Lancaster, Pa.

The Board of Foreign Missions of the Augustana Synod, Inc., 2445 Park Avenue, Minneapolis, Minn.

Foreign Mission Board of the Southern Baptist Convention, Post Office Box 5148, Richmond, Va.

Christian Missionary Alliance, 260 West 44th Street, New York, N. Y.

Evangelical Mission Covenant Church of America, 1005 Belmont Avenue, Chicago, Ill.

Yale-in-China, 905A Yale Station, New Haven, Conn.

United Board for Christian Colleges in China, 150 Fifth Avenue, New York, N. Y.

Church World Service, 214 East 21st Street, New York, N. Y.

The United Christian Missionary Society, 222 South Downey Avenue, Indianapolis, Ind.

Friends Foreign Mission Society of Ohio Yearly Meeting, Damascus, Ohio

Board of Foreign Missions of the General Conference of the Mennonite Church of North America, 1528 Chew Street, Allentown, Pa.

In the following historical account of the matter this committee of reference and counsel of the Foreign Missions Conference of North America will be referred to as the committee.

In 1946 the committee was offered a number of 1,000- and 500-bed hospitals, and it asked that seven 1,000-bed units and one 500-bed unit be set aside for it. This material was located at a supply base near Manila, Philippine Islands. The committee's representatives were only allowed to make a very insufficient inspection of the units prior to accepting delivery. The Army did not allow these representatives to break open the cases prior to purchase in order to examine their condition and inventory them. Instead they were told that there was no inventory, but that the units contained all that the printed Medical Catalog 10-2 stated they were to contain with the exception of drugs. When the committee representatives asked for a price list showing how the cost had been determined for each unit, they were

told they could not be given one, but they could make one up themselves by borrowing the price book. They were also assured that the units had not been moved more than twice; once from the United States to some other place, and then to Manila. Examination of the cases subsequently disclosed that this was not the case.

When the committee had arranged to purchase the units, and began to load them, it soon became apparent that the units had deteriorated to an advanced degree, and committee representatives requested that the Foreign Liquidation Commissioner send someone to inspect the goods as they were being loaded. After much delay such a person did come down to the ship, but did very little in the way of going over the shipment. The ship could only be kept at the dock for 5 days under the terms granted for loading the ship, and it was not possible to check the cases against the printed catalog. Later inspection disclosed that even if there had been time for such an inspection prior to shipment, it would not have meant much because many boxes and crates did not contain what the markings on the cases indicated they contained.

One of the thousand-bed units was left in Manila, six were shipped to Shanghai, China. The 50-bed hospital was also left in Manila and the 500-bed unit was shipped to Bangkok, Siam.

#### *Units Left in Manila*

##### *1,000-bed unit*

Government declared value—no allowance for deterioration or shortages-----	\$184,617. 00
Actually received as per inventory-----	85,649. 54
Short-----	98,967. 46

This hospital was trucked only a few miles from the Government warehouse to the committee's warehouse. The condition of this unit was bad. Committee representatives in Manila requested the Foreign Liquidation Office in Manila to check the condition of the goods but to no avail. Many cases upon being opened were found to contain something different from what the markings on the case indicated was inside. Many cases containing bottles were in bad condition and nearly all the bottles were broken. The packing around the bottles indicated that the contents had been broken for a long time. All mechanical pieces were rusted and needed complete overhauling and in many instances not all the parts were found. Quite a few such pieces were still not usable, because the missing parts could not be secured. The condition of much of this type of equipment makes the total value of the goods received even less than shown on the inventory. These units were purchased because the committee was advised that it would not be able to purchase individually much that it wanted and which was supposed to be included in the units. The groups represented by the committee were especially in need of bed linen, towels, blankets, X-ray machines, sterilizers, and items of this type. When the hospitals were delivered it was found that the bulk of the shortages were in these items.

*50-bed unit*

Government declared value—no allowance for deterioration or shortages-----	\$14, 335. 00
Actually received as per inventory-----	9, 294. 56
Short-----	5, 040. 44

The condition of the goods received clearly showed that a deterioration factor should have been allowed.

A considerable amount of the shortages can be accounted for on the basis the units did not contain, at the time the sale was negotiated, all the items set forth in the medical catalogs and upon which basis the units were priced. In other words, if inventories had been available the value of the units would not have been as high as set forth by the Foreign Liquidation Commissioner in the papers of sale.

The committee was advised by the Office of the Foreign Liquidation Commissioner when the hospital units were purchased that inventories were not available but inventories have since been located for several of the units. An inventory was found for the 1,000-bed unit left in Manila. This inventory shows a value of only \$165,902.19 as compared to the value of \$184,617 which the Government placed upon this hospital.

*500-bed unit shipped to Siam*

When this unit was loaded on board the ship at Batangas in the Philippine Islands, committee representatives realized that it was in very bad condition.

This hospital was listed by the Government—declared value—no allowance for deterioration or shortages-----	\$139, 153. 00
Actually received as per inventory-----	38, 530. 02
Short-----	100, 622. 98

The following is a statement signed by seven members of a Siam mission reporting on the condition of the contents of this hosnital:

AMERICAN PRESBYTERIAN MISSION,  
*Bangkok, Siam, June 12, 1947.*

Condition of 500-bed military hospital from Philippines.

Dr. J. LEON HOOPER,  
*Secretary for Siam,  
Presbyterian Board of Foreign Missions,  
156 Fifth Avenue, New York.*

DEAR DR. HOOPER: Inasmuch as the Siam mission has received from the board a 500-bed military hospital shipped from Manila, the cost of which has been charged to the mission's restoration fund to the amount of \$75,000, a sum which totals a quarter of all restoration funds thus far available to us, and half of that which is available for use this year, we, the members of the emergency executive committee, think it is absolutely necessary to give the board a clear report on the condition and amount of the equipment received. We do not here raise the question of the appropriateness of this equipment to the existing needs here. We simply wish to report what has been actually received, and what equipment is usable, of the supposedly new and complete hospital equipment purchased for this large sum of money.



Major shortages have been found in almost every department of these hospital supplies. In certain cases, good material has been nullified by the loss of key parts without which the equipment is useless. In other cases the equipment is in such condition that large sums must be spent to restore it to usable condition.

Cloth goods had been almost completely ransacked before the hospital ever left the Philippines. There was no hospital blankets as listed at all. Of the 3,744 sheets listed, only 399 came through, not new, all used, some badly mildewed. There were no summer pajamas—coats and trousers. About half of the mattresses could not be used at all, or only as fragments for patching together a much smaller number of makeshifts; only about one-third of those received could be used exactly as they arrived. Towels (bath and hand) were not more than a tenth of those listed, and many were badly mildewed. Pillows also were a great loss, not more than 100 being in usable condition.

Of the 500 steel hospital beds received, nearly half were broken to the extent of needing major repairs to springs and frames. About 25 were broken beyond repair. All were badly rusted. Scraping and repainting will amount to the cost of a new bed.

The X-ray is unable to function because essential small parts are missing. On one unit the oil casing of the oil immersion tube is cracked. The generator is badly rusted so that its life will probably be short.

Only 3 of 10 typewriters arrived, and in each case some parts were missing, and the entire mechanism jammed and rusted, necessitating expensive repairs.

In the laboratory equipment, the story is the same; 72 categories of equipment are missing or short, including 2 binocular microscopes, 1 rotary microtome, 1 clinical microtome, 1 electric drying oven, 1 analytical rest balance, 1 single beam balance, 2 anaerobic culture apparatus, 1 basal metabolism apparatus, 1 electric vacuum pump, 1 electric "shaking apparatus," and an inoculating water bath. Test tubes, bottles, piping, and other glass equipment are short in varying degrees, to be detailed more fully later. The hand centrifuge, lacking a handle and the necessary cups, is useless. The "water bath" which did come through will not function because of faulty electrical elements.

Laboratory reagents bottles had been completely or partially emptied before they arrived here. Some medicine bottles have had their labels washed off and, so unidentifiable, are useless.

The only category of equipment arriving in good condition and in reasonably complete quantity is that of small surgical instruments. The packing of these instruments in impregnated cloth has preserved them magnificently.

In consideration of the serious shortages and the bad condition of so much of this equipment, we feel that a radical adjustment in the price to be paid for this hospital is essential, and we earnestly recommend discussion to this end with the Foreign Liquidation Commission of the United States Government. From our viewpoint, such an adjustment is necessary in order to enable us to make the purchases necessary to fill the gaps remaining in the equipment supplied, and to put the faulty material into usable condition.

We realize that detailed lists must accompany the discussion for a final settlement, and we have such lists in preparation to be sent later for documentation of these facts.

Very sincerely yours,

E. C. CORT, M. D., *Medical Chairman.*

Mrs. GRAHAM FULLER, *Executive Secretary.*

H. W. STEWART.

A. G. SEIGLE.

Mrs. HOWARD E. THOMAS.

F. C. TRAVAILLE.

W. J. S. THOMPSON.

### *China*

Six 1,000-bed units were shipped to Shanghai. These were valued at \$184,617 each, a total of \$1,107,702, less 40 percent, making the net price \$664,621.20. No allowance was made for depreciation, breakage, or shortages. There were no inventories available—the units were supposed to contain all the items listed in the official catalog for a 1,000-bed hospital, not including the drugs.

It was not possible to inventory each unit except to count the number of boxes, bundles, and bales marked as belonging to each unit. These varied from 2,409 for unit SGA-1 to 2,779 for unit SGA-97. The shipment was sent there on the steamship *Peter Moran* which was chartered to ship these purchases from Manila to China.

The warehouses in Shanghai to which these goods were transferred had its own private dock at which the *Peter Moran* unloaded. Approximately 20 missionaries of various denominations supervised the unloading, thus keeping the loss by theft to a minimum. The warehouses themselves were of brick construction and carefully guarded so there was negligible loss from robbery.

In addition to the six 1,000-bed units almost all of the other purchases were sent to China. The report sets forth the condition of those goods and the quantity short. It was not possible to inventory the items purchased from Samar, Philippine Islands. At the time of loading it was found that many items on the mimeographed list were not available. The officers in charge said they were including other goods to more than make up for those shortages. They also advised committee representatives that they did not have the personnel to check the items as they were delivered from the warehouses.

It will be noted from the China report, also a letter dated August 14, 1947, from R. M. White, that inventories were found for at least one unit, in spite of the fact that the authorities in Manila had advised that there were none available. Also, that some boxes when opened were found to contain goods other than the marking indicated were inside.

Three sewing machines were picked up by the committee's own truck at the base at San Fernando. Mr. Pattison was present when these crates were received. They were taken to the warehouses in Manila and one opened for inspection. It was found to be very poorly packed and the machine broken and useless. Mr. Pattison personally requested the Office of the Foreign Liquidation Commissioner in Manila to inspect the machine, but no one ever came to make an inspection.

The same is true regarding tool chests purchased. Three were not crated so they were opened and found to contain miscellaneous weighty

items which made the chests weigh as though they contained the tools supposed to be in the chest. A letter was sent to the Manila office of the Foreign Liquidation Commissioner. No answer was ever received nor was an inspection made.

### *General*

In the early part of September 1946, Mr. Thomas McCabe, then Commissioner for Foreign Liquidation of War Surplus, was advised that the committee's Manila office reported a great shortage in the 1,000-bed unit left there. Shortly after Mr. Henry Dudley returned from the Philippines and called on Mr. Pattison and discussed the settlement of these purchases. After several conferences and some correspondence, Mr. Dudley said nothing further could be accomplished until his office received a full report from their Manila office. Accordingly, the committee waited for further word from Mr. Dudley or the Washington office of the Foreign Liquidation Commissioner before making any suggestions regarding the final settlement for these purchases.

In considering the final settlement it should be reiterated that these purchases were made for nonprofit organizations and that no individual realized any profit from these purchases. They were and are now being used in relieving misery in the Far East and rebuilding American institutions damaged by the war.

### STATEMENT

As is evidenced by the foregoing history, the committee of reference and counsel of the Foreign Missions Conference of North America is a nonprofit institution which arranged to purchase surplus property from the Government. The Comptroller General in the report of the General Accounting Office to the Committee on the Judiciary on H. R. 2261 and H. R. 3282 has stated that the General Accounting Office has no objection to the favorable consideration of a bill granting relief to the committee of reference and counsel of the Foreign Missions Conference. That report makes it clear that, unfortunately, from a legal and contractual standpoint there is nothing that can be done to relieve this charitable organization. The broad and general terms of the contract have been applied to hold the committee of reference and counsel liable notwithstanding the unfortunate facts which have been detailed in the historical account in this report. The Committee on the Judiciary is of the opinion that this contract was drafted on the premise that the purchase of surplus property would be on the basis of arms-length dealing between the purchaser and the Government. This assumed that the purchaser would be able to inspect the property to be purchased, and accordingly put that burden on the purchaser. All of this is reflected in the provisions now being cited as the basis for holding the committee of reference and counsel liable for an additional \$424,258.35, despite the fact that the committee of reference and counsel has already paid an amount in excess of the actual value of the property received. These provisions included an express lack of warranty as to the property purchased, the provision that the property was sold "as is, where is," and providing that, unless otherwise specified, the quantity or weight of items was approximate only.

When this case is considered in the light of the facts and circumstances of the purchase and delivery of the surplus property concerned

it is clear that the strict application of the contract's terms has placed an extremely unfair burden on this organization of charitable and religious groups. The Committee on the Judiciary is impressed by the following passage from the report of the Comptroller General:

While we cannot legally relieve the purchaser of its indebtedness to the United States, it does appear from the record that the purchaser may have signed certifications of delivery of the property involved without first determining the quantity being delivered. Thus, it is possible that at least a portion of the alleged shortages existed at the time the purchaser assumed control of the property. Furthermore, the property was disposed of pursuant to the provisions of the Surplus Property Act of 1944 (58 Stat. 765). The purchaser is a nonprofit charitable institution of the type referred to in section 13 of that act and since under that act the Congress had evidenced an intention that such institutions shall be afforded every opportunity to purchase Government surplus property on very liberal terms, if not through outright donation, in order to fulfill their legitimate needs, we have no objection to favorable consideration of H. R. 2261 and H. R. 3282.

Further, the Comptroller General states that the record indicated that the purchaser submitted a timely request for an adjustment for shortages and also furnished a detailed inventory as to the items actually received.

In view of the circumstances of the purchase of the property, the fact that it was to be devoted by a nonprofit organization to charitable purposes, and finally that the property was disclosed to be of less value than the \$1 million actually paid, the Committee on the Judiciary has decided that it is unfair to penalize the committee on reference and counsel by forcing it to pay the additional money claimed by the Government. Accordingly, the Committee on the Judiciary recommends that the bill be considered favorably.

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DEPARTMENT OF STATE,  
Washington, February 20, 1957.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives.*

DEAR MR. CELLER: In its letter of February 4, 1957, the House Committee on the Judiciary requested the views of the Department of State on H. R. 2261, introduced by Mr. Hays of Arkansas on January 7, 1957, entitled, "For the relief of the committee of reference and counsel of the Foreign Missions Conference of North America." This bill is similar to S. 413, 84th Congress, 1st session and to S. 12, 85th Congress, 1st session. I am glad to furnish the following summary of the Department's action on the account rendered to the committee of reference and counsel and to enclose for the committee's consideration copies of correspondence containing additional details. The Department's files on this subject are rather voluminous; however, if the committee should desire to examine the complete file, it



will, of course, be made available to the committee's representatives upon request.

The committee of reference and counsel of the Foreign Missions Conference of North America, 156 Fifth Avenue, New York 10, N. Y., purchased a large quantity and variety of surplus property from the Office of the Foreign Liquidation Commissioner, Department of State, under contract No. W-ANL (PA-1)-3614, dated May 31, 1946, and supplement No. 1 thereto, dated June 12, 1946. As a deposit against the contract, the purchaser, the committee of reference and counsel, paid \$1 million to the seller, the Government, to be applied against surplus property to be selected and delivered at various military installations in the Philippines area.

When the selections and deliveries of the surplus property had been completed, the Central Field Commissioner for the Pacific and China areas, Office of the Foreign Liquidation Commissioner, with headquarters at Manila, submitted an accounting showing the total delivery of property to be \$1,783,992.40. This was \$783,992.40 in excess of the original payment. Various efforts were made by both the seller and the purchaser to reconcile the accounts and records of this transaction. Supplemental material filed by the purchaser computed the total value of all property delivered under the contract to be \$785,206.63, or \$214,793.37 less than the original amount paid. A reaudit of the files and records by the seller showed the amount outstanding to be \$424,258.35 as the result of appropriate adjustments. A statement of account and request for payment was given to the purchaser on August 4, 1953. This statement of account reflected agreed discounts but did not allow credits for inferior condition and shortages claimed by the purchaser.

Losses and depreciation of the kind listed by the purchaser are conceded to have been common in the handling of surplus property under emergency conditions in tropical and semitropical areas; however, articles 2 and 3 of the contract cover such matters and limit the authority for administrative adjustment. Articles 2 and 3 provide as follows:

*"Article 2.* All property listed in the schedules to be attached hereto is sold 'as is, where is'; the Seller makes no warranty, guaranty, nor representation, express or implied, as to the kind, size, weight, quantity, quality, character, description, or condition of any of the property or its fitness for any use or purpose, other than warranty as to title; this is not a sale by sample. In this connection the Buyer is given the right to inspect the property to be sold at such times and under such regulations as may be prescribed by the military authorities. No labor will be furnished by the Seller for such purpose, and in no case will failure to inspect be considered ground for a claim for adjustment or rescission.

*"Article 3.* Title to the property sold hereunder shall vest in the Buyer at the time of execution of the schedule on which the particular property is listed, and the Buyer agrees to take delivery of that property as soon as practicable, but in no event later than thirty (30) days after the date of the schedule."

In view of the record of receipt of each lot of property, evidenced by a receipt signed by representatives of the purchaser, the Department of State was not in a position to make allowances for condition factors and losses discovered after ocean shipment, which was arranged and controlled by the purchaser.

The purchaser requested that the claim be submitted to the General Accounting Office for consideration, and this was done under date of March 30, 1954. The General Accounting Office assigned docket No. DW-Z 1492654 to the claim and on July 15, 1954, informed the committee of reference and counsel that its claim had been carefully examined and a finding made that no part thereof could be allowed. On September 16, 1954, the General Accounting Office issued a certificate of indebtedness against the committee of reference and counsel in the amount of \$424,258.35.

The provisions of the contract of sale and the conditions of delivery did not support additional administrative adjustments for shortages and condition as claimed by the purchaser. The records show that appropriate discounts, including, in many instances, a discount for deterioration in addition to other discounts, were taken into consideration and credited at the time the purchase prices were established. For example, in the case of drugs and supplies located at the base at Samar, discounts ranging from 14 to 17 percent were allowed at the time of sale even though application of the standard depreciation rates applying at the time to such surplus property would have allowed only a discount of about 3 percent.

The claim of the purchaser for further allowances for depreciation and shortage is based upon inventories and inspection of the property after acceptance of delivery by the purchaser, and in most instances after the loading, handling, and shipment incident to transportation of the surplus property to China from the Philippine area. Once the property was delivered to the purchaser in the Philippines, the care, custody, and handling of the property became the responsibility of the purchaser or its agent, the Southern Cross Trading Co. The provisions of the contract of sale and limitations on the authority of administrative authorities to adjust accounts did not permit adjustments whereby the Government would become responsible for losses and deterioration of property which cannot be established to have occurred prior to delivery and shipment.

The Department has been informed by the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

ROBERT C. HILL,  
*Assistant Secretary*  
(For the Secretary of State).

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COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, December 23, 1957.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives.*

DEAR MR. CHAIRMAN: Further reference is made to your letter of December 2, 1957, requesting our views on H. R. 2261 and H. R. 3282.

The bills would relieve the committee of reference and counsel of the Foreign Missions Conference of North America from liability to pay to the United States any amount over and above the sum of \$1 million already paid for certain surplus property purchased by the committee under contract No. W-ANL(PA-I)-3614, dated May 31, 1946, and supplement No. 1 thereto, dated June 12, 1946, between

the committee and the United States acting through the Central Field Commissioner for the Pacific and China areas, Office of the Foreign Liquidation Commissioner.

The facts of the matter may be summarized briefly as follows: Under the terms of the contract the committee, a nonprofit institution, agreed to purchase certain surplus property from the Government. Pertinent articles of the contract provide in part (art. 2) that the property is sold "as is, where is" without warranty except as to title, the buyer being given the right to inspect the property to be sold at such time and under such regulations as may be prescribed by the military authorities; (art. 3) that the buyer agrees to take delivery of the property as soon as practicable, but in no event later than 30 days after the date of the schedule; (art. 4) that the purchase price for the property shall be 60 percent of the actual value thereof as determined by the seller and accepted by the buyer; and (art. 9) that unless otherwise specified the quantity or weight of certain items is approximate only and any substantial variation in the quantity or weight stated for any item sold on a per item or unit basis, and the quantity or weight of the article actually delivered to the buyer, will be adjusted if the buyer presents a request for adjustment to the United States within a reasonable time which shall in no event be more than 60 days from the date of delivery.

The committee paid \$1 million to the United States as a deposit under the contract. After completion of deliveries, the Central Field Commissioner for the Pacific and China areas submitted an accounting showing the total contract price of the property delivered to be \$1,783,992.40. This was \$783,992.40 in excess of the original payment. Various efforts were made by both the seller and the purchaser to reconcile the accounts and records of the transaction. The purchaser presented a statement showing the total value of all property delivered under the contract to be \$785,206.63, or \$214,793.37 less than the original amount paid. In this statement the purchaser alleged that the shortages in the hospital units alone amounted to the declared value of \$465,592.35. In view of the fact that the property was sold "as is" and "where is" without warranty and since the purchaser signed receipts for each lot of property, condition factors and shortages alleged by the contractor were not allowed on the ground that the losses were discovered after ocean shipment arranged and controlled by the purchaser even though the administrative office admits that shortages were common in the handling of surplus property under emergency conditions in tropical and semitropical areas. Consequently, a statement of account was submitted by the Department of State to the purchaser on August 4, 1953, showing the contract price as \$1,424,258.35. This statement reflected agreed discounts but did not allow credits for inferior condition of the property and shortages claimed by the purchaser. On the basis of the reported facts the committee was certified to be indebted to the United States in the amount of \$424,258.35 and the indebtedness was reported to the Attorney General for collection action.

Insofar as concerns the condition of surplus goods offered for sale by the Government on an "as is" basis without warranty or guarantee of any kind, the law is clear that a bidder who fails to take advantage of an opportunity to inspect cannot subsequently recover on the grounds that the goods are of an inferior quality.

Regarding the alleged shortages, the record indicates that the purchaser submitted a timely request for adjustment for shortages and furnished a detailed inventory as to the items actually received.

On the other hand, the administrative office reported that the purchaser signed a receipt for each lot of property and that the claim of the purchaser for shortages is based upon inventories made after acceptance of delivery by the purchaser, and in most instances after the loading, handling, and shipment incident to transportation of the surplus property to China from the Philippine area. Under those circumstances, the administrative office refused to make an adjustment for shortages which could not be established to have existed prior to acceptance of delivery and shipment by the purchaser. Since there is no evidence available to prove conclusively that the alleged shortages existed at the time the purchaser receipted for the property, we likewise cannot legally relieve the purchaser of its indebtedness to the Government.

While we cannot legally relieve the purchaser of its indebtedness to the United States it does appear from the record that the purchaser may have signed certifications of delivery of the property involved without first determining the quantity being delivered. Thus, it is possible that at least a portion of the alleged shortages existed at the time the purchaser assumed control of the property. Furthermore, the property was disposed of pursuant to the provisions of the Surplus Property Act of 1944 (58 Stat. 765). The purchaser is a non-profit charitable institution of the type referred to in section 13 of that act and, since under that act the Congress had evidenced an intention that such institutions shall be afforded every opportunity to purchase Government surplus property on very liberal terms, if not through outright donation, in order to fulfill their legitimate needs, we have no objection to favorable consideration of H. R. 2261 and H. R. 3282.

Sincerely yours,

JOSEPH CAMPBELL,  
*Comptroller General of the United States.*

